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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JANE MERRIAM CODY,

Plaintiff and Respondent,

v.

DAYNA HESTER,

Objector and Appellant.

B200335 consolidated with  
B200887 and B203737

(Los Angeles County  
Super. Ct. No. BD205080)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
(Scott M. Gordon, Commissioner)

[NO CHANGE IN JUDGMENT]

THE COURT:

IT IS ORDERED that the opinion filed herein on October 30, 2008, be modified in the following particulars:

On page 8 of the typed opinion, second full paragraph under the heading “Commissioner Gordon’s Authority to Rule on Cody’s Sanction Motions,” delete the second sentence beginning with “We disagree” and all text thereafter ending at the top of page 10 with “probate cases she cites,” and replace with the following, so that it now reads:

We assume for sake of argument that Hester became a party litigant once Commissioner Gordon granted Cody's motion to compel and imposed sanctions against her for discovery abuses. But even if she was a party litigant whose stipulation was required to vest jurisdiction in the temporary judge, the record reflects Hester consented to have Commissioner Gordon preside over the discovery dispute. (Cf. *In re Plotkin* (1976) 54 Cal.3d 1014, 1016-1017 [orders directing a nonparty witness to appear for testimony and holding the witness in contempt for failing to appear were void in the absence of the witness's stipulation to the temporary judge].)

Hester sought a protective order from Commissioner Gordon in response to Cody's subpoena to appear at deposition and to produce documents. Her act of seeking the protective order was tantamount to a stipulation to the commissioner's jurisdiction. A "valid stipulation for purposes of the constitutional provision may arise as a result of the conduct of the parties." (*In re Horton* (1991) 54 Cal.3d 82, 91 [counsel's conduct in willingly participating in the trial before the commissioner was tantamount to a stipulation to the commissioner's jurisdiction to hear the cause, even without the defendant's consent].) Having invoked the commissioner's jurisdiction by requesting affirmative relief in the form of a protective order, Hester, by her conduct, stipulated to have Commissioner Gordon preside over the discovery dispute. Conduct alone "short of an express oral or written stipulation may be tantamount to a stipulation that a court commissioner may sit as a temporary judge." (*Id.* at p. 91.)

Hester nevertheless argues that even if she is deemed to have stipulated to Commissioner Gordon to sit as a temporary judge by

seeking the protective order, her stipulation did not extend to his subsequent order compelling production of documents, nor to the court's imposition of sanctions against her for opposing Cody's attempts to obtain the documents and deposition testimony Cody's subpoena sought. She claims that each of these were discrete proceedings which required additional stipulations to invest jurisdiction in Commissioner Gordon, and by filing a notice that she had withdrawn her consent, the sanction order Commissioner Gordon imposed against her is void for lack of jurisdiction. We disagree.

“The appointment of a temporary judge to hear a particular ‘cause’ carries with it the power to act until the final determination of *that proceeding*.” (*Sarracino v. Superior Court* (1974) 13 Cal.3d 1, 10.) A “cause” is “the proceeding before the court.” (*Id.* at p. 9.) The “proceeding before the court” in this case was the discovery dispute between Cody and Hester. It began with Hester's request for a protective order to prevent the deposition and disclosure of the documents sought in the subpoena, it continued through Cody's motion to compel the discovery that the subpoena requested, and concluded with the court's imposition of sanctions against Hester for her bad faith tactics in attempting to prevent that discovery. “The original stipulation at the commencement of discovery proceedings set the stage for everything to come; no further stipulation was necessary.” (*Walker v. San Francisco Housing Authority* (2002) 100 Cal.App.4th 685, 692 [discovery referee had jurisdiction to rule on the agency's motion for relief from default resulting from the referee's imposition of terminating sanctions against it for discovery abuses].)

Commissioner Gordon retained jurisdiction to impose his orders compelling discovery and imposing discovery sanctions as they were but a continuation of the initial proceeding in which Hester sought a protective order from the same discovery. As Hester correctly notes, the power of a temporary judge to determine any given subsequent proceeding hinges on “whether that proceeding is ancillary to, or a direct progeny of, the stipulated cause.” (*Walker v. San Francisco Housing Authority, supra*, 100 Cal.App.4th 685, 692.) The sanction order did not concern an ancillary proceeding, but was a direct progeny of the stipulated cause over which Commissioner Gordon had jurisdiction.

This modification does not result in a change in the judgment.

Appellant’s request for judicial notice and petition for rehearing are denied.

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MALLANO, P. J.

ROTHSCHILD, J.

WEISBERG, J.\*

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\* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.